



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**

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**SOURCECORP, INC. v. DEAN AND STACEY NORCUTT  
CV-11-0269-PR**

**PARTIES:**

*Petitioner:* Sourcecorp, Inc.

*Respondents:* Dean and Stacey Norcutt

*Amicus Curiae:* The Land Title Association

**FACTS:**

This case concerns an appeal from a judgment allowing Sourcecorp to proceed with a forced sale of the Norcutts' home ("the property") in partial payment of a \$3 million judgment that Sourcecorp obtained against the Shills, the former owners of the property. Sourcecorp recorded the judgment but failed to include information required by statute ("the information statement"). Before Sourcecorp could collect on the judgment, however, the Norcutts purchased the property from the Shills, and the Shills used the money they received from the sale to pay off a first position lien on the property held by Zions Bank ("the Bank"). Although the Norcutts had purchased title insurance, the title company failed to find Sourcecorp's recorded judgment, so the Norcutt-Shill sale closed without notice or payment to Sourcecorp and without release of its judgment lien.

Sourcecorp obtained a writ of general execution and noticed a Sheriff's sale of the property. The Norcutts intervened, seeking to stop the Sheriff's sale and asking the court to declare that Sourcecorp had no valid lien because (1) Sourcecorp had not recorded the information statement with the judgment; (2) the parcel was exempt from execution under the homestead laws; and (3) Sourcecorp's judgment was inferior to the Norcutts' interest based on equitable subrogation.

The trial court granted the Norcutts' motion to quash the writ of general execution, finding that the priority of Sourcecorp's judgment lien would date from when the judgment information statement was filed; the priority applied to purchasers as well as to competing liens on the property; and the Norcutts had a prior interest, making their interest superior to Sourcecorp's.

Sourcecorp appealed. In 2006, the court of appeals vacated the judgment, finding that Sourcecorp's failure to attach the information statement to the judgment did not invalidate its lien, and the trial court "erred in construing the word 'priority' to include not only competing lienholders, but also subsequent purchasers." On remand, the Norcutts argued the homestead exemption applied and, because they had paid off the Bank's first position lien, they held the

priority position based on equitable subrogation, even though the judgment lien recording lacked the information statement.

Sourcecorp contended the Shills had abandoned the homestead by moving to California, and that equitable subrogation does not allow a purchaser of property to acquire the rights of an extinguished lien ahead of a creditor whose lien existed at purchase. It further argued the Norcutts were “volunteers” because they were not forced to pay another’s debt to protect their own interest. The trial court granted summary judgment for Sourcecorp and allowed the forced sale. It rejected the Norcutts’ equitable subrogation argument, reasoning the Norcutts could not have a lien on their own house. The court found the Shills abandoned their homestead exemption.

The Norcutts appealed. The court of appeals noted that, pursuant to A.R.S. §12-1553(2), a judgment creditor holding a lien on real property may seek to satisfy a judgment even if the debtor transfers the property to a third person. Further, a judgment creditor’s right to levy on the property exists to the exclusion of any rights that may have attached subsequent to the judgment lien. Nevertheless, the court found the Norcutts were equitably subrogated to the Shills’ lien position. Application of the “equitable subrogation” doctrine allows someone who pays off a primary and superior encumbrance to be substituted into the primary lienholder’s priority position, despite recordation of an intervening lien. Here, that would mean that the Norcutts would stand in the Bank’s position and their mortgage would be superior to Sourcecorp’s judgment lien.

The appellate court found the appropriate issue was whether the Norcutts, who paid an existing encumbrance as part of the purchase price, were entitled to succeed to the priority rights of the creditor whose encumbrance they paid. The court concluded equitable subrogation should not be precluded merely because the party seeking subrogation was a purchaser who had paid the existing encumbrance in connection with the purchase. In paying off the encumbrance, the Norcutts were protecting their concurrently acquired interest by ensuring clear title to the property and were therefore not mere volunteers. Nor did the fact that the Norcutts had title insurance preclude their being equitably subrogated. Application of equitable subrogation imposed no harm on Sourcecorp, which was in the same lien position it would have been in had no error occurred. Not applying equitable subrogation, on the other hand, would elevate Sourcecorp to a position higher than it was in when the lien attached, giving it a windfall at the Norcutts’ expense.

#### **ISSUE:**

Buyers purchased for cash real property in which they had no prior interest. There was a mortgage and a judgment lien on the property, but because of an error by the buyer’s title insurer the buyers were not made aware of the judgment lien. The purchase money was used to pay off the mortgage, but the buyers had no express or implied subrogation agreement or any expectation they would assume the position of the paid-off mortgagee. Are the buyers nevertheless entitled to move ahead of the judgment lienholder under the doctrine of equitable subrogation?

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